

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 31, 2025

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VERONICA T.,

Plaintiff,

v.

LELAND DUDEK, ACTING
COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

No. 1:23-CV-03168-JAG

ORDER GRANTING
PLAINTIFF'S MOTION
TO REVERSE THE
DECISION OF THE
COMMISSIONER

BEFORE THE COURT are Plaintiff's Opening Brief and the Commissioner's Brief in response. ECF Nos. 10, 14. Attorney D. James Tree represents Veronica T. (Plaintiff); Special Assistant United States Michael J. Mullin represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before the undersigned by operation of Local Magistrate Judge Rule (LMJR) 2(b)(2), as no party returned a Declination of Consent Form to the Clerk's Office by the established deadline. ECF No. 5.

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Leland Dudek, Acting Commissioner of Social Security, is substituted as the named Defendant.

1 After reviewing the administrative record and the briefs filed by the parties,
2 the Court **GRANTS** Plaintiff's motion to reverse the decision of the
3 Commissioner, **DENIES** Defendant's motion to affirm, and **REMANDS** the
4 matter for further proceedings under sentence four of 42 U.S.C. § 405(g).

5 I. JURISDICTION

6 Plaintiff filed an application for benefits on April 7, 2017, later alleging
7 disability since April 7, 2017. The application was denied initially and upon
8 reconsideration. Administrative Law Judge (ALJ) Mary Gallagher Dilley held a
9 hearing on November 20, 2019, and issued an unfavorable decision on December
10 24, 2019. This Court subsequently remanded the matter on March 22, 2022. ALJ
11 C. Howard Prinsloo held a second hearing on June 15, 2023, and issued an
12 unfavorable decision on August 9, 2023. Tr. 1498-1515. Plaintiff appealed this
13 final decision of the Commissioner on October 25, 2023. ECF No. 1.

14 II. STANDARD OF REVIEW

15 The ALJ is responsible for determining credibility, resolving conflicts in
16 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
17 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
18 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
19 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed
20 only if it is not supported by substantial evidence or if it is based on legal error.
21 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is
22 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at
23 1098. Put another way, substantial evidence is such relevant evidence as a
24 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*
25 *Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305
26 U.S. 197, 229 (1938)).
27
28

1 If the evidence is susceptible to more than one rational interpretation, the
2 Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at
3 1098; *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).
4 If substantial evidence supports the administrative findings, or if conflicting
5 evidence supports a finding of either disability or non-disability, the ALJ’s
6 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th
7 Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set
8 aside if the proper legal standards were not applied in weighing the evidence and
9 making the decision. *Browner v. Sec’y of Health and Human Services*, 839 F.2d
10 432, 433 (9th Cir. 1988).

11 III. SEQUENTIAL EVALUATION PROCESS

12 The Commissioner has established a five-step sequential evaluation process
13 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
14 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-42 (1987). At steps one through
15 four, the claimant bears the burden of establishing a prima facie case of disability.
16 *Tackett*, 180 F.3d at 1098-99. This burden is met once a claimant establishes that a
17 physical or mental impairment prevents the claimant from engaging in past
18 relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a claimant cannot
19 perform past relevant work, the ALJ proceeds to step five, and the burden shifts to
20 the Commissioner to show (1) the claimant can make an adjustment to other work
21 and (2) the claimant can perform other work that exists in significant numbers in
22 the national economy. *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). If a
23 claimant cannot make an adjustment to other work in the national economy, the
24 claimant will be found disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

26 IV. ADMINISTRATIVE FINDINGS

27 On August 9, 2023, the ALJ issued a decision finding Plaintiff was not
28 disabled as defined in the Social Security Act. Tr. 1498-1515.

1 At *step one*, the ALJ found Plaintiff had not engaged in substantial gainful
2 activity since April 7, 2017, the amended alleged onset date. Tr. 1502.

3 At *step two*, the ALJ determined Plaintiff had the following severe
4 impairments: obesity, bilateral carpal tunnel syndrome, radial styloid tenosynovitis,
5 lumbar spine degenerative disc disease, depressive disorder, and pain disorder with
6 related psychological factors. Tr. 1502.

7 At *step three*, the ALJ found these impairments did not meet or equal the
8 requirements of a listed impairment. Tr. 1503

9 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and
10 determined Plaintiff could perform light work subject to the following additional
11 limitations:

12 [T]he claimant can frequently climb ramps and stairs, and never climb
13 ladders, ropes, or scaffolds. She can frequently stoop, kneel, crouch,
14 and never crawl. The claimant can frequently handle and finger
15 bilaterally. She should avoid concentrated exposure to respiratory
16 irritants or hazards as defined in the Select Characteristics of
17 Occupations. The claimant is capable of understanding, remembering,
18 and performing perform simple, routine tasks. The claimant is able to
have occasional superficial contact with the public and coworkers, but
with no collaborative tasks.

19 Tr. 1505.

20 At *step four*, the ALJ found Plaintiff could perform past relevant work as a
21 housekeeping cleaner. Tr. 1513.

22 Alternatively, at *step five*, the ALJ found there are jobs that exist in
23 significant numbers in the national economy that the claimant could perform, to
24 include electric accessory assembler, marker, and small parts assembler. Tr. 1514

25 The ALJ thus concluded Plaintiff was not disabled from the amended
26 alleged onset date through the date of the decision. Tr. 1515.
27
28

V. ISSUES

The question presented is whether substantial evidence supports the ALJ's decision denying benefits and, if so, whether that decision is based on proper legal standards.

Plaintiff raises the following issues for review: (A) whether the ALJ improperly evaluated the medical opinion evidence; and (B) whether the ALJ erred by discounting Plaintiff's testimony. ECF No. 10 at 2.

VI. DISCUSSION

A. Medical Evidence.

Under regulations applicable to this case, the ALJ is required to articulate the persuasiveness of each medical opinion, specifically with respect to whether the opinions are supported and consistent with the record. 20 C.F.R. § 416.920c(a)-(c). An ALJ's consistency and supportability findings must be supported by substantial evidence. *See Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

Plaintiff argues the ALJ misevaluated four sets of medical opinions. ECF No. 10 at 15-21. The Court discusses the ALJ's treatment of each in turn.

1. Emma Billings, Ph.D.

The ALJ noted that Dr. Billings, who performed a psychological evaluation of Plaintiff, opined that Plaintiff "had difficulty understanding directions and appeared distracted and inattentive at times during her psychological assessment." Tr. 1510. The ALJ found the opinion "generally persuasive," and stated that "these opined limitations were incorporated into the claimant's mental residual functional capacity." Tr. 1510. However, as Plaintiff correctly argues, *see* ECF No. 10 at 17, the ALJ's RFC formulation did not incorporate these opined limitations. *Compare* Tr. 1510, *with* Tr. 1505. Further, these opined limitations appear inconsistent with the ALJ's finding that Plaintiff is "capable of

1 understanding [and] remembering ... simple, routine tasks.” Tr. 1505. The ALJ
2 thus erred by failing to incorporate these opined – and accepted – limitations into
3 the RFC formulation. *Cf.* SSR 96-8p, 1996 WL 374184, at *7 (Jul. 2, 1996) (“If
4 the RFC assessment conflicts with an opinion from a medical source, the
5 adjudicator must explain why the opinion was not adopted.”).

6 **2. Lauren Hohman, PA-C (2019).**

7 PA-C Hohman, one of Plaintiff’s treating providers, opined on March 26,
8 2019, among other things, that Plaintiff was limited to sedentary work and would
9 miss at least four days of work per month if attempting to work a 40-hour
10 workweek. Tr. 1184. The ALJ found the opinion “non-persuasive.” Tr. 1511.

11 The ALJ discounted PA-C Hohman’s opinion as “inconsistent with the
12 record overall,” for two reasons. Tr. 1511. Neither is legally sound. First, the
13 ALJ noted Plaintiff had a gap in treatment for a year prior to this opinion. ...
14 During this treatment gap, she admitted that she worked as a housekeeping
15 cleaner.” Tr. 1511. However, this Court previously concluded that “[t]hough
16 [Plaintiff] attempted to work, the record indicates she was unable to maintain her
17 position due to absences,” and noted that “[a]ttempting to work and having a desire
18 to work are not the same as being actually capable of working on a regular and
19 consistent basis.” Tr. 1680. The Court’s review of this already-rejected rationale
20 is therefore precluded by the doctrine of the law of the case. *See Stacy v. Colvin*,
21 825 F.3d 563, 567 (9th Cir. 2016).

22 Second, the ALJ discounted the opinion based on PA-C Hohman’s
23 assessment that Plaintiff “should be able to work if she had a carpal tunnel surgery,
24 which the claimant subsequently underwent.” Tr. 1511. Again, this rationale
25 conflicts with this Court’s previous decision: the Court previously concluded that
26 “there is no indication that [Plaintiff’s] status ever reached or exceeded her pre-
27 surgery abilities.” Tr. 1680; *see also* Tr. 1679 (concluding ALJ’s assessment that
28

1 Plaintiff's surgery improved her symptoms is "not supported by the record"). The
2 Court's review of this already-rejected rationale is therefore precluded by the
3 doctrine of the law of the case. *See Stacy*, 825 F.3d at 567.

4 The ALJ thus erred by discounting PA-C Hohman's 2019 opinion.

5 **3. Lauren Hohman, PA-C (2022).**

6 On June 27, 2022, and August 8, 2022, PA-C Hohman again opined Plaintiff
7 was limited to sedentary work. Tr. 1875, 1878. The ALJ rejected these opinions.
8 Tr. 1512. The ALJ first discounted the opinions as "inconsistent with the overall
9 record[.]" Tr. 1512. As an initial matter, an ALJ may not reject a medical opinion
10 "with boilerplate language that fails to offer a substantive basis for" the ALJ's
11 conclusion. *Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir. 2014) (citing
12 *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996) ("[A]n ALJ errs when he
13 rejects a medical opinion or assigns it little weight while doing nothing more than
14 ignoring it, asserting without explanation that another medical opinion is more
15 persuasive, or criticizing it with boilerplate language that fails to offer a
16 substantive basis for his conclusion.")). Further, an ALJ's rejection of a clinician's
17 opinion on the ground that it is contrary to unelaborated evidence in the record is
18 "broad and vague," and fails "to specify why the ALJ felt the [clinician's] opinion
19 was flawed." *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989); *see also*
20 *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (rather than merely stating
21 their conclusions, ALJs "must set forth [their] own interpretations and explain why
22 they, rather than the doctors', are correct") (citing *Embrey v. Bowen*, 849 F.2d 418,
23 421-22 (9th Cir. 1988)). The reviewing court need not comb the administrative
24 record to find specific conflicts. *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir.
25 2014). The ALJ thus erred by discounting the opinions on this ground.

27 The ALJ next discounted the opinions on the ground they did not "address
28 the claimant's repeated pattern of no-shows, medication non-compliance, and non-

1 adherence to treatment recommendations.” Tr. 1512. Substantial evidence does
2 not support this ground, as the record makes clear Plaintiff was in active treatment,
3 underwent testing, and sought out referrals. *See, e.g.*, Tr. 2223-25, 2230-35, 2247.

4 Finally, the ALJ discounted the opinions as failing to “address the claimant’s
5 treatment gaps and her attempts to return to work during these treatment gaps.”
6 Tr. 1512. As discussed above, on this record, these are not valid grounds to
7 discount the clinician’s opinion.

8 The ALJ accordingly erred by discounting PA-C Hohman’s 2022 opinions.

9 **4. Sarah Singer, PT.**

10 PT Singer, one of Plaintiff’s treating clinicians, opined on June 27, 2019,
11 among other things, that Plaintiff was limited to sedentary or less-than-sedentary
12 work and would miss four days of work per month if attempting to work a 40-hour
13 workweek. Tr. 1489. The ALJ found the opinion “non-persuasive.” Tr. 1512.

14 The ALJ discounted the opinion on the ground “that the totality of the
15 evidence, including the claimant’s treatment gaps coinciding with her work
16 attempts, pattern of treatment noncompliance and complaints of recurring pain
17 after admitting to her treatment noncompliance, indicate that a less restrictive
18 degree of limitation is warranted.” Tr. 1512. For the reasons discussed above, on
19 this record, these are not valid grounds to discount the clinician’s opinion.
20

21 **B. Plaintiff’s Testimony.**

22 Plaintiff contends the ALJ erroneously discounted her testimony. ECF
23 No. 10 at 3-16. Where, as here, the ALJ determines a claimant has presented
24 objective medical evidence establishing underlying impairments that could cause
25 the symptoms alleged, and there is no affirmative evidence of malingering, the
26 ALJ can only discount the claimant’s testimony as to symptom severity by
27 providing “specific, clear, and convincing” reasons supported by substantial
28 evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). The Court

1 concludes the ALJ failed to offer clear and convincing reasons to discount
2 Plaintiff's testimony.

3 The ALJ first discounted Plaintiff's testimony as inconsistent with the
4 medical evidence, to include Plaintiff's course of, response to, and consistency of
5 treatment. Tr. 1507-09. However, because the ALJ erred in evaluating four sets of
6 medical opinions, and necessarily failed to properly evaluate the medical evidence,
7 as discussed above, this is not a valid ground to discount Plaintiff's testimony.

8 The ALJ also discounted Plaintiff's migraine headaches allegations as
9 inconsistent with her activities, noting that "she was able to do homework with her
10 four kids, take care of her pets, and manage the SSI benefits for the three older
11 children who qualified for SSI due to ADHD." Tr. 1509. This finding fails for
12 two reasons. First, Plaintiff "can both do nothing when [s]he has severe headaches
13 and engage in [her] daily activities when [s]he does not." *See Ferguson v.*
14 *O'Malley*, 95 F.4th 1194, 1203 (9th Cir. 2024). Second, Plaintiff's minimal
15 activities are neither inconsistent with nor a valid reason to discount her
16 allegations. *See Diedrich v. Berryhill*, 874 F.3d 634, 643 (9th Cir. 2017) ("House
17 chores, cooking simple meals, self-grooming, paying bills, writing checks, and
18 caring for a cat in one's own home, as well as occasional shopping outside the
19 home, are not similar to typical work responsibilities."); *Vertigan v. Halter*, 260
20 F.3d 1044, 1050 (9th Cir. 2001) ("This court has repeatedly asserted that the mere
21 fact that a plaintiff has carried on certain daily activities, such as grocery shopping,
22 driving a car, or limited walking for exercise, does not in any way detract from her
23 credibility as to her overall disability. One does not need to be 'utterly
24 incapacitated' in order to be disabled.") (quoting *Fair v. Bowen*, 885 F.2d 597, 603
25 (9th Cir. 1989), *superseded on other grounds by* 20 C.F.R. § 404.1502(a));
26 *Reddick*, 157 F.3d at 722 ("Several courts, including this one, have recognized that
27 disability claimants should not be penalized for attempting to lead normal lives in
28

1 the face of their limitations.”); *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987)
2 (noting that a disability claimant need not “vegetate in a dark room” in order to be
3 deemed eligible for benefits). Similarly, Plaintiff’s activities do not “meet the
4 threshold for transferable work skills.” *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.
5 2007) (citing *Fair*, 885 F.2d at 603). The ALJ thus erred by discounting Plaintiff’s
6 testimony on this ground.

7 The ALJ accordingly erred by discounting Plaintiff’s testimony.

8 VII. CONCLUSION

9 This case must be remanded because the ALJ harmfully misevaluated the
10 medical evidence and Plaintiff’s testimony. Plaintiff contends the Court should
11 remand for an immediate award of benefits. Such a remand should be granted only
12 in a rare case and this is not such a case. The medical evidence and Plaintiff’s
13 testimony must be developed and reweighed and this is a function the Court cannot
14 perform in the first instance on appeal. Further proceedings are thus not only
15 helpful but necessary. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir.
16 2015) (noting a remand for an immediate award of benefits is an “extreme
17 remedy,” appropriate “only in ‘rare circumstances’”) (quoting *Treichler v. Comm’r*
18 *of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014)).

19 Nevertheless, mindful that Plaintiff first filed her application in 2017, the
20 Court imposes the following time limits on subsequent proceedings: The ALJ
21 must complete further proceedings within 180 days and, if the ALJ finds Plaintiff
22 not disabled and Plaintiff appeals, the Commissioner’s final decision shall be
23 rendered within 90 days of the appeal. *See Butts v. Barnhart*, 416 F.3d 101, 103-
24 06 (2d Cir. 2005) (imposing 120-day limit for proceedings before the ALJ and a
25 60-day limit for administrative appeal); *Baldree v. Colvin*, 2015 WL 5568611, at
26 *5 (C.D. Cal. Sept. 21, 2015) (collecting cases recognizing the authority to impose
27
28

1 time limits); *see also* HALLEX 1-2-1-55.D.2 (articulating agency procedures
2 following a time-limited court remand).

3 On remand, the ALJ shall develop the record; reevaluate the medical
4 opinions discussed herein; reassess Plaintiff's testimony; and reevaluate the steps
5 of the sequential evaluation, as appropriate.

6 Having reviewed the record and the ALJ's findings, the Commissioner's
7 final decision is **REVERSED** and this case is **REMANDED** for further
8 proceedings under sentence four of 42 U.S.C. § 405(g).

9 Therefore, **IT IS HEREBY ORDERED:**

- 10 1. Plaintiff's motion to reverse, **ECF No. 10**, is **GRANTED**.
11 2. Defendant's motion to affirm, **ECF No. 14**, is **DENIED**.
12 3. The District Court Executive is directed to file this Order and provide
13 a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for
14 Plaintiff and the file shall be **CLOSED**.

15 **IT IS SO ORDERED.**

16 DATED March 31, 2025.




JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE